

1 Andrew H. Wilson, SBN #063209
WILSON, RYAN & CAMPILONGO
2 115 Sansome St., 4th Floor
San Francisco, California 94104
3 (415) 391-3900
Telefax: (415) 954-0938
4

5 Laurie J. Bartilson, SBN #139220
MOXON & BARTILSON
6 6255 Sunset Boulevard, Suite 2000
Hollywood, CA 90028
(213) 960-1936
7 Telefax: (213) 953-3351

8 Attorneys for Cross-Defendant
CHURCH OF SCIENTOLOGY
9 INTEPNATIONAL

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 FOR THE COUNTY OF MARIN
12

13 CHURCH OF SCIENTOLOGY)
INTERNATIONAL, a California not-for-profit)
14 religious corporation,)

15 Plaintiff,)

16 vs.)

17)
18 GERALD ARMSTRONG, et al.,)

19 Defendants.)

20 _____)
21 AND RELATED CROSS-ACTIONS)
_____)

CASE NO. 157 680

) [CONSOLIDATED]

) CHURCH OF SCIENTOLOGY
) INTERNATIONAL'S REPLY IN
) SUPPORT OF RENEWAL MOTION
) FOR SUMMARY JUDGMENT OF
) DEFENDANT GERALD
) ARMSTRONG'S CROSS-
) COMPLAINT

) Date: March 8, 1996

) Time: 9:00 a.m.

) Dept: 1

) Trial Date: Vacated

22
23
24
25
26
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19

I. INTRODUCTION

Plaintiff/Cross-Defendant Church of Scientology International ("the Church") seeks summary judgment of defendant Armstrong's single remaining cross-claim, for declaratory relief, and thus an end to this litigation. In its moving papers, the Church demonstrated that this Court had already determined the enforceability of most of the provisions of the contract concerning which Armstrong seeks a declaration, that there is no existing controversy as to the remaining paragraphs, and that the paragraphs are, in any case, enforceable as a matter of law. Armstrong's opposition consists of (1) wholesale repetition of his argument that the enforcement of the agreement (at all) violates his First Amendment rights; (2) a declaration that this Court has "misinterpreted" the agreement; and (3) an admission that the paragraphs presently at issue are, indeed, not in controversy between the parties.¹

Only Armstrong's admission is actually relevant to the determination of this motion. Since Armstrong has agreed that the remaining paragraphs are not the subject of any present controversy between the parties, the Church is entitled to judgment on Armstrong's claim for declaratory relief. In the alternative, the Court should interpret the provisions of the contract as a matter of law, on summary judgment rather than an unnecessary bench trial, and grant the Church summary judgment on the ground that the provisions in question do not "suppress evidence" or "obstruct justice."

20
21
22

II. THE CHURCH IS ENTITLED TO SUMMARY JUDGMENT

As set forth in detail in the moving papers, Armstrong's complaint for declaratory relief seeks a declaration as to the validity of nine paragraphs contained in the 1986

23
24
25
26
27
28

¹ On Thursday, February 29, 1996, one day before this reply was due to be filed, attorneys for the Church received a document from Armstrong titled "Armstrong's Amended Opposition to Renewal Motion for Summary Judgment of Armstrong's First Amended Cross-Complaint." This document is dated "February 26, 1996," and is not file-stamped. Armstrong's opposing papers were due to be filed on February 23, 1996, and, if this document was filed with the Court, it was filed late, and without the Court's prior permission. The document itself is nothing more than still another plea for the Court to reconsider its earlier rulings, coupled with unsupported accusation that the Court "has ignored much evidence, many legal precedents, considerable law and reasonable logic." [Amended Oppo. at 1] The Church requests that the Court refuse to consider this late-filed document, pursuant to Marin County Superior Court Rule 3.03(F).

1 settlement agreement ("the Agreement"). This Court has already determined that there is no
2 controversy as to two of the paragraphs, which concern an appeal now ended, or as to an
3 additional five paragraphs, which this Court has already issued orders enforcing. Only
4 paragraphs 7I and 18E remain to be interpreted.²

5 The Church is entitled to a judgment as a matter of law as to paragraphs 7I and 18E
6 for two distinct and compelling reasons: (1) no actual controversy exists relating to the legal
7 rights and duties of the parties with respect to these two paragraphs, and (2) the paragraphs
8 are valid and enforceable provisions and are not in any sense "designed to suppress evidence
9 and obstruct justice."

10 **A. No Actual Controversy Exists As To Paragraphs 7I And 18E**

11 Armstrong does not dispute that in order to maintain an action for declaratory relief,
12 he must do more than simply allege that he and the plaintiff disagree about the terms of a
13 contract. A real, not a theoretical, controversy must be both alleged and proven. *Sherwyn &*
14 *Handel v. California State Department of Social Services* (1985) 173 Cal.App.3d 52, 57, 218
15 Cal.Rptr. 778, 782; *Pittenger v. Home Savings & Loan Assn.* (1958) 166 Cal.App.2d 32,
16 37. His opposing papers are silent as to this controlling legal authority. He does, however,
17 admit that the following facts are undisputed:

18 + The only actions pending between the Church and Armstrong are this

20 ² Request for Judicial Notice, Exhibit F, Ruling of December 1, 1995:

21 As to the first cause of action of defendant's cross-complaint, plaintiff has
22 failed to meet its burden of showing that the Court determined the enforceability
23 of paragraphs 7I and 18E of the settlement agreement. The motions directed at
24 the fourth, sixth, thirteenth, sixteenth, seventeenth and nineteenth causes of action
25 only involved paragraph 7D of the settlement agreement. Defendant does not
26 dispute that "paragraphs 4A and 4B concern an appeal which has already become
27 final, and as to which no rights, duties or obligations could be enforced in the
28 future." The order of permanent injunction did not find violations of paragraphs
7I and 18E.

(Citations omitted). The order of permanent injunction specifically found that Armstrong had
violated paragraphs 7D, 7H, 7G, 10, and 18D, and that these provisions were enforceable.
[Request for Judicial Notice, Exhibit E at 2:15; 6:21 - 9:3].

1 consolidated action and an adversary proceeding filed by the Church in
2 Armstrong's bankruptcy (collectively, "the Actions") [Armstrong's Separate
3 Statement, No. 5, at 32-33];

4 + In the Actions between the Church and Armstrong, the Church has
5 never tried to specifically enforce paragraphs 7I and 18E of the Settlement
6 Agreement or to recover damages for breaches of them by Armstrong [*Id.*,
7 No. 6, at 33];

8 + It is not likely that the Church will seek to enforce paragraphs 7I and
9 18E of the Settlement Agreement [*Id.*, No. 7, at 33-34].

10 Under these circumstances, it is obvious that no real controversy exists as to which
11 this Court should grant declaratory relief. The Church is thus entitled to summary judgment
12 of the cross-claim as a matter of law.

13 **B. Armstrong is Not Entitled to a Declaration Invalidating Paragraphs 7I**
14 **And 18E As a Matter of Law**

15 Even if the Court decides that Armstrong's request for declaratory relief does present
16 an actual controversy, the Church is still entitled to summary judgment in its favor.
17 Armstrong does not dispute the controlling principle that "[w]here there is no conflict as to
18 the terms of a contract, and where its provisions are not uncertain or ambiguous, its
19 'meaning and effect * * * and the relation of the parties to it thereby created * * * become a
20 question of law to be decided by the court.'" *Nizuk v. Georges* (1960) 180 Cal.App.2d 699,
21 705, 4 Cal.Rptr. 565, 570 (citations omitted). No trial is necessary to determine that
22 Paragraphs 7I and 18E are valid and enforceable, or that they do not obstruct justice or
23 suppress evidence as a matter of law.

24 Paragraph 7I of the Settlement Agreement constitutes a more specific expression of
25 the parties' intent, manifested in paragraphs 4, 5, and 6,³ to mutually release one another for
26 damages relating to any claims then pending, or injuries known or unknown at the time of

27 _____
28 ³ See Sep.St. No. 12.

1 the execution of the Settlement Agreement. The import of this paragraph is simply that, in
2 the event the parties were to litigate other matters against one another in the future, they
3 would not re-visit the evidence and issues being resolved in 1986 by the Settlement
4 Agreement. Nothing in this paragraph obstructs justice or suppresses evidence.

5 Paragraph 18E of the Settlement Agreement is just an express statement of the
6 covenant of good faith and fair-dealing which is implied into any contract entered into in
7 California. When obligations under a contract persist into the future, the parties have a
8 continuing duty to refrain from taking any action which will deprive the other party of the
9 benefits of their bargain. The precise terms of Paragraph 18E command and obligate no
10 more than this, and certainly require no conduct which either "suppresses evidence" or
11 "obstructs justice."

12 The Church is thus entitled to judgment declaring that Paragraphs 7I and 18E are
13 valid and enforceable as a matter of law.

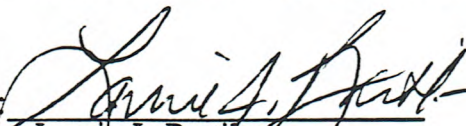
14 III. CONCLUSION

15 The Church has provided the Court with two independent and fully-supported bases
16 on which to base the summary judgment of Armstrong's cross-complaint in the Church's
17 favor. In response, Armstrong has simply refiled papers already considered, argued that the
18 Court has in the past "misinterpreted" the Agreement, and admitted that the relevant facts are
19 undisputed. The Church thus requests that the Court enter an order of summary judgment of
20 the cross-complaint for cross-defendant, Church of Scientology International.

21 Dated: March 1, 1996

Respectfully Submitted,

22 WILSON, RYAN & CAMPILONGO

23
24 By: 
25 Laurie J. Bartilson
MOXON & BARTILSON

26 Attorneys for Cross-Defendant
27 CHURCH OF SCIENTOLOGY
28 INTERNATIONAL

PROOF OF SERVICE

STATE OF CALIFORNIA)
) ss.
COUNTY OF LOS ANGELES)

I am employed in the County of California, State of California. I am over the age of eighteen (18) years and not a party to the within action. My business address is 6255 Sunset Boulevard, Suite 2000, Hollywood, CA 90028.

On March 1, 1996 I served the foregoing document described as CHURCH OF SCIENTOLOGY INTERNATIONAL'S REPLY IN SUPPORT OF RENEWAL MOTION FOR SUMMARY JUDGMENT OF DEFENDANT GERALD ARMSTRONG'S CROSS-COMPLAINT on interested parties in this action,

[] by placing the true copies thereof in sealed envelopes as stated on the attached mailing list;

[X] by placing [] the original [X] true copies thereof in sealed envelopes addressed as follows:

Gerald Armstrong
715 Sir Francis Drake Blvd.
San Anselmo, CA 94960-1949

MICHAEL WALTON
700 Larkspur Landing Circle
Suite 120
Larkspur, CA 94939

[] *I deposited such envelope in the mail at Los Angeles, California. The envelope was mailed with postage thereon fully prepaid.

[X] As follows: I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. postal service on that same day with postage thereon fully prepaid at Los Angeles, California in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing an affidavit.

Executed on March 1, 1996, at Los Angeles, California.

[] **** (BY PERSONAL SERVICE)** I delivered such -- envelopes by hand to the offices of the addressees.

Executed on _____, at _____, California.

[X] (State) I declare under penalty of the laws of the State of California that the above is true and correct.

[] (Federal) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Abel E. Lemara
Print or Type Name

Abel E. Lemara
Signature

* (By Mail, signature must be of person depositing envelope in mail slot, box or bag)

** (For personal service signature must be that of messenger)